



STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

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|---------------------------|---|-------------------------|
| CASEY WACK, |) | |
| |) | |
| Charging Party, |) | Case No. LA-CE-307-H |
| |) | |
| v. |) | PERB Decision No. 961-H |
| |) | |
| UNIVERSITY OF CALIFORNIA, |) | November 24, 1992 |
| LOS ANGELES, |) | |
| |) | |
| Respondent. |) | |

Appearances: Casey Wack, on his own behalf; Regents of the University of California by Claudia Cate, University Counsel, for University of California, Los Angeles.

Before Hesse, Chairperson; Camilli and Caffrey, Members.

DECISION

HESSE, Chairperson: This case is before the Public Employment Relations Board (PERB or Board) on an appeal filed by charging party, Casey Wack (Wack), to the Board agent's dismissal (attached hereto) of his unfair practice charge. The unfair practice charge alleged that the University of California, Los Angeles (University) retaliated against Wack in violation of section 3571 of the Higher Education Employer-Employee Relations Act (HEERA).¹

¹HEERA is codified at Government Code section 3560 et seq. Unless otherwise indicated, all statutory references are to the Government Code. Section 3571 states, in pertinent part:

It shall be unlawful for the higher education employer to do any of the following:

(a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce

Wack filed a timely appeal of the Board agent's dismissal of his unfair practice charge, wherein he reasserts that his "wrongful layoff" occurred within six months of his filing of the unfair practice charge.

On August 17, 1992, the University requested permission to submit a late filing of a response to Wack's appeal. The University submits that good cause exists to justify the late filing in this matter. The appeal was date-stamped in the University's office on July 17, 1992, but was not docketed or calendared pursuant to office procedures.

The University also asserts that Wack's document was not easily identifiable as an appeal. Specifically, Wack addressed the letter to both the regional attorney and PERB Board Members.

Neither the cover letter nor the amended unfair practice charge attached to the cover letter include a case number, an omission that supports the University's initial conclusion that Wack had filed an amended unfair practice charge, or possibly even a new unfair practice charge.

The Board has reviewed the dismissal, and finding it to be free of prejudicial error, adopts it as the decision of the Board itself consistent with the following discussion.

employees because of their exercise of rights guaranteed by this chapter. For purposes of this subdivision, "employee" includes an applicant for employment or reemployment.

DISCUSSION

Pursuant to PERB Regulation section 32136,² the Board may excuse a late filing for good cause only. In previous decisions, the Board has excused certain clerical errors where there was no prejudice to the opposing party. (See Trustees of the California State University (1989) PERB Order No. Ad-192-H; The Regents of the University of California (Davis, Los Angeles, Santa Barbara and San Diego) (1989) PERB Order No. Ad-202-H; North Orange County Regional Occupational Program (1990) PERB Decision No. 807; and Los Angeles Unified School District (1991) PERB Decision No. 874.)

Due to an inadvertent clerical error, Wack's appeal was not processed by the University in accordance with its normal office procedures resulting in the late filing of the University's response. Further, as the Board had not ruled on Wack's appeal prior to receiving the University's response, there is no prejudice to Wack in accepting and considering the University's response. This is supported by the fact that PERB regulations do not provide for a reply to a party's response to an appeal. (See PERB Regulation section 32635.) In accordance with PERB Regulation 32136, the Board finds that good cause exists to

²PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq. PERB Regulation 32136 provides:

A late filing may be excused in the discretion of the Board for good cause only. A late filing which has been excused becomes a timely filing under these regulations.

excuse the late filing, and accepts the University's response.

With regard to the merits of the Board agent's dismissal, the Board affirms the Board agent's dismissal of the unfair practice charge based on untimeliness. HEERA section 3563.2(a) states that PERB "shall not issue a complaint in respect of any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge." This six month statute of limitations begins to run on the date the charging party has notice of the respondent's intent to implement an alleged unfair practice. (See Regents of the University of California (1990) PERB Decision No. 826-H and Los Angeles Unified School District (1991) PERB Decision No. 894.) In the present case, Wack had notice on May 9, 1991 of the University's intent to lay him off on November 9, 1991. However, Wack did not file his charge until January 21, 1992, which was more than six months later. The unfair practice charge is barred by the six-month statute of limitations. Accordingly, his appeal is denied.

ORDER

The unfair practice charge in Case No. LA-CE-307-H is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Camilli and Caffrey joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD



Los Angeles Regional Office
3530 Wilshire Boulevard, Suite 650
Los Angeles, CA 90010-2334
(213) 736-3127



June 25, 1992

Casey Wack

Re: DISMISSAL AND REFUSAL TO ISSUE COMPLAINT, Unfair Practice
Charge No. LA-CE-307-H, Casey Wack v. University of
California. Los Angeles

Dear Mr. Wack:

I indicated to you in my attached letter dated May 28, 1992, that the above-referenced charge did not state a prima facie case. You were advised that if there were any factual inaccuracies or additional facts that would correct the deficiencies explained in that letter, you should amend the charge accordingly. You were further advised that unless you amend the charge to state a prima facie case, or withdrew it prior, to June 8, 1992, the charge would be dismissed.

On June 8, 1992, you filed an amended charge. Nothing in the amended charge, however, alters the conclusion in my May 28 letter that you had notice on May 9, 1991, of the University's intent to lay you off. There is no allegation of a later indication of a wavering of that intent. The charge should therefore have been filed within six months of May 9, 1991, but it was not. I am therefore dismissing the charge, based on the facts and reasons contained in my May 28 letter.

Right to Appeal

Pursuant to Public Employment Relations Board regulations, you may obtain a review of this dismissal of certain allegations contained in the charge by filing an appeal to the Board itself within twenty (20) calendar days after service of this dismissal (California Code of Regulations, title 8, section 32635(a)). To be timely filed, the original and five copies of such appeal must be actually received by the Board itself before the close of business (5:00 p.m.) or sent by telegraph, certified or Express United States mail postmarked no later than the last date set for filing (California Administrative Code, title 8, section 32135). Code of Civil Procedure section 1013 shall apply. The Board's address is:

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Public Employment Relations Board
1031 18th Street
Sacramento, CA 95814

If you file a timely appeal of the refusal to issue a complaint, any other party may file with the Board an original and five copies of a statement in opposition within twenty calendar days following the date of service of the appeal (California Code of Regulations, title 8, section 32635(b)).

Service

All documents authorized to be filed herein must also be "served" upon all parties to the proceeding, and a "proof of service" must accompany each copy of a document served upon a party of filed with the Board itself. (See California Code of Regulations, title 8, section 32140 for the required contents and a sample form.) The document will be considered properly "served" when personally delivered or deposited in the first-class mail postage paid and properly addressed.

Extension of Time

A request for an extension of time in which to file a document with the Board itself must be in writing and filed with the Board at the **previously** noted **address**. A request for an extension must be filed at least three calendar days before the expiration of the time required for filing the document. The request must indicate good cause for and, if known, the position of each other party regarding the extension, and shall be accompanied by proof of service of the request upon each party (California Code of Regulations, title 8, section 32132).


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Final Date

If no appeal is filed within the specified time limits, the dismissal will become final when the time limits have expired.

Sincerely,

JOHN W. SPITTLER
General Counsel

By 
Thomas J. Allen
Regional Attorney

TJA:lgf

Attachment

cc: Claudia Cate

PUBLIC EMPLOYMENT RELATIONS BOARD



Los Angeles Regional Office
3530 Wilshire Boulevard, Suite 650
Los Angeles, CA 90010-2334
(213) 736-3127



May 28, 1992

Casey Wack

Re: WARNING LETTER (Statute of Limitations), Unfair Practice
Charge No. LA-CE-307-H, Casey Wack v. University of
California. Los Angeles

Dear Mr. Wack: _____

In the above-referenced charge, you allege that the University of California, Los Angeles (University) retaliated against you, in alleged violation of Government Code section 3571 of the Higher Education Employer-Employee Relations Act (HEERA).

My investigation of the charge reveals the following facts.

In November 1991, the University allegedly laid you off from your employment at the White Mountain Research Station. You allege that this was in retaliation for your previous involvement in grievances filed against the University.

On May 9, 1991, you had signed "under protest" a Personnel Action Form which specified that your appointment was as a "casual" employee and would end on November 9, 1991. It appears that your layoff in November 1991 was pursuant to the appointment specified in the Personnel Action Form.

The charge was filed on January 21, 1992.

Based on the facts stated above, the charge does not state a prima facie violation of the HEERA within the jurisdiction of the Public Employment Relations Board (PERB), for the reasons that follow.

Government Code section 3563.2(a) of the HEERA states that PERB "shall not issue a complaint in respect of any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge." This six-month statute of limitations begins to run on the date the charging party has notice of the respondent's intent to implement an alleged unfair practice. Regents of the University of California (1990) PERB Decision No. 826-H. See also Los Angeles Unified School District (1991) PERB Decision No. 894. In the present case, it appears that you had notice on May 9, 1991, of the University's intent to

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lay you off on November 9, 1991, but you filed your charge more than six months after May 9, 1991.

For these reasons, the charge as presently written does not state a prima facie case. If there are any factual inaccuracies in this letter or any additional facts that would correct the deficiencies explained above, please amend the charge accordingly. The amended charge should be prepared on a standard PERB unfair practice charge form clearly labeled First Amended Charge, contain all the facts and allegations you wish to make, and must be signed under penalty of perjury by the charging party. The amended charge must be served on the respondent and the original proof of service must be filed with PERB. If I do not receive an amended charge or withdrawal from you before June 8, 1992, I shall dismiss your charge. If you have any questions, please call me at (213) 736-3127.

Sincerely,

A handwritten signature in cursive script that reads "Thomas J. Allen".

THOMAS J. ALLEN
Regional Attorney